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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.      | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------|------------------|
| 10/034,886   | 12/28/2001  | Jay D. Hodson        | 24180-907000             | 1633             |
| 7590   | 12/17/2003  |                      | EXAMINER<br>RHEE, JANE J |                  |
| Stephen T. Scherrer<br>McDermott, Will & Emery<br>227 West Monroe Street<br>Chicago, IL 60606-5096 |             |                      | ART UNIT<br>1772         | PAPER NUMBER     |

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|  |                         |                  |
|--|-------------------------|------------------|
| <b>Office Action Summary</b>   | Application N .         | Applicant(s)     |
|  | 10/034,886              | HODSON ET AL.    |
|  | Examiner<br>Jane J Rhee | Art Unit<br>1772 |
| <b>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</b>   |                         |                  |
| <b>Period for Reply</b>  |                         |                  |
| <b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>   |                         |                  |
| <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul> |                         |                  |
| <b>Status</b>  |                         |                  |
| 1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>09 September 2003</u> .  |                         |                  |
| 2a) <input type="checkbox"/> This action is <b>FINAL</b> .                    2b) <input checked="" type="checkbox"/> This action is non-final.  |                         |                  |
| 3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.  |                         |                  |
| <b>Disposition of Claims</b>   |                         |                  |
| 4) <input checked="" type="checkbox"/> Claim(s) <u>31-69</u> is/are pending in the application.  |                         |                  |
| 4a) Of the above claim(s) <u>51-69</u> is/are withdrawn from consideration.  |                         |                  |
| 5) <input type="checkbox"/> Claim(s) _____ is/are allowed.   |                         |                  |
| 6) <input checked="" type="checkbox"/> Claim(s) <u>31-50</u> is/are rejected.  |                         |                  |
| 7) <input type="checkbox"/> Claim(s) _____ is/are objected to.   |                         |                  |
| 8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.   |                         |                  |
| <b>Application Papers</b>  |                         |                  |
| 9) <input type="checkbox"/> The specification is objected to by the Examiner.  |                         |                  |
| 10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.  |                         |                  |
| Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  |                         |                  |
| 11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner.  |                         |                  |
| If approved, corrected drawings are required in reply to this Office action.   |                         |                  |
| 12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.   |                         |                  |
| <b>Priority under 35 U.S.C. §§ 119 and 120</b>   |                         |                  |
| 13) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).   |                         |                  |
| a) <input type="checkbox"/> All    b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:   |                         |                  |
| 1. <input type="checkbox"/> Certified copies of the priority documents have been received.   |                         |                  |
| 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.  |                         |                  |
| 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).   |                         |                  |
| * See the attached detailed Office action for a list of the certified copies not received.   |                         |                  |
| 14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  |                         |                  |
| a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.   |                         |                  |
| 15) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.  |                         |                  |
| <b>Attachment(s)</b>   |                         |                  |
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  |                         |                  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   |                         |                  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.   |                         |                  |
| 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.  |                         |                  |
| 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |                         |                  |
| 6) <input type="checkbox"/> Other: _____.  |                         |                  |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of Group I in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 31,38-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Huizinga (5001325).

Huizinga discloses a flexible thermoplastic polymeric film comprising a plurality of layers (col. 3 lines 66-67, col. 4 lines 1-8), a surface of the flexible film comprising a coordinate system having a machine direction and a transverse direction perpendicular to the machine direction (col. 3 lines 16-21) and a first laser scored pattern on the surface of the flexible film wherein the first laser scored pattern is disposed in both the

machine direction and the transverse direction of the surface of the flexible film wherein the first laser scored pattern forms a first line of weakness in the flexible film (col. 3 lines 16-21). Huizinga discloses a first layer comprising a material of polypropylene (col. 4 line 1). Huizinga discloses that the first layer forms an outer layer of the flexible film (col. 4 line 9). Huizinga discloses a second layer comprising a material selected from group consisting of adhesive (col. 4 line 4). Huizinga discloses that the first laser scored pattern comprises a first portion that is straight and parallel to the edge of the flexible film wherein the edge runs in the machine direction (figure 4b number 21). Huizinga discloses that the first laser scored pattern comprises a first portion and a second portion, wherein the first portion is displaced from the second portion in the transverse direction of the surface of the flexible film (figure 5 number 21). Huizinga discloses the first laser scored pattern comprises a recurring pattern in the machine direction of the surface of the flexible film (col. 1 lines 55-62). Huizinga discloses that the first portion is a straight line disposed in the machine direction of the surface of the flexible film (figure 5 number 21). Huizinga discloses that the first portion and the second portion form a continuous score line (figure 5 number 21). Huizinga discloses that the second portion is displaced toward the first edge of the flexible film relative the first portion (figure 5 number 21). Huizinga discloses a recurring symbol on the surface of the flexible film for indicating where to apply the first laser scored pattern on the face of the flexible film (figure 5 letter z). Huizinga discloses a second laser scored pattern on the surface of the flexible film wherein the second laser scored pattern is disposed in the machine direction and the transverse direction of the surface of the flexible film and

further wherein the second laser scored pattern forms a second line of weakness in the flexible film (figure 5 number 21). Huizinga discloses that the first laser scored pattern is disposed proximate a first edge of the flexible film and further wherein the second laser scored pattern is mirror image of the first laser scored pattern and further wherein the second laser scored pattern is disposed proximate a second edge of the flexible film (figure 5 number 21). Huizinga discloses a flexible film comprising an outer material of polypropylene (col. 4 line 1) and a barrier layer (col. 4 line 5) within the flexible film comprising a material of metal foil wherein the outer layer and barrier material is laminated to the second film structure with a material of adhesive (col. 4 line 4).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 32-37,49-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huizinga in view of Schlaeppi (0596747)..

Huizinga discloses the flexible thermoplastic polymeric film described above. Huizinga fail to disclose an outer first layer of oriented polypropylene or a first layer of barrier layer such as a metal foil. Huizinga fail to disclose that the second layer does not have the first laser scored pattern etched therein. Schlaeppi teaches an outer first layer of oriented polypropylene or a first layer of a barrier layer such as a metal foil (col. 4 lines 29-37) for the purpose of providing a multilayer flexible packaging film (col. 4

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lines 39-40). Schlaeppi teaches that the second layer does not have the first scored pattern etched therein for the purpose to effect easy opening of the package along the rows of slits of the first layer which would facilitate the rupture of the other layer and to provide ready access to the product in the product receiving chamber (col. 2 lines 40-49).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Huizinga with an outer first layer of oriented polypropylene or a first layer of a barrier layer such as a metal foil in order to provide a multilayer flexible packaging film (col. 4 lines 39-40) as taught by Schlaeppi.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Huizinga with the second layer that does not have the first scored pattern etched therein in order to effect easy opening of the package along the rows of slits of the first layer which would facilitate the rupture of the other layer and to provide ready access to the product in the product receiving chamber (col. 2 lines 40-49) as taught by Schlaeppi.

4. Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huizinga in view of Bailey (6544629).

Huizinga discloses the flexible thermoplastic polymeric film described above. Huizinga fail to disclose that the first line of weakness in the flexible film has a tensile strength measured across the line of weakness of between about 3 lb/in. and about 10lb/in, preferably 6.5lb/in. Bailey discloses that the first line of weakness in the flexible film has a tensile strength measured across the line of weakness of between 6 to 16

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lbs/inch for the purpose of enabling separation between adjacent laminate structures (col. 1 lines 60-64).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Huizinga with the first line of weakness in the flexible film that has a tensile strength measured across the line of weakness of between 6 to 16 lbs/inch in order to enable separation between adjacent laminate structures (col. 1 lines 60-64) as taught by Bailey.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Jane Rhee  
December 10, 2003



NASSER AHMAD  
PRIMARY EXAMINER